



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Cleta Mitchell, Esquire
Foley & Lardner LLP
Washington Harbour
3000 K Street, N.W. Suite 600
Washington, D.C. 20007-5109

DEC -4 2015

Re: MUR 6840
All Citizens for Mississippi *et al.*

Dear Ms. Mitchell:

This is in reference to the complaint you filed with the Federal Election Commission on June 13, 2014, on behalf of Tea Party Patriots Citizens Fund and its Chairman, Jenny Beth Martin. Based on that complaint, on November 19, 2015, the Commission voted to dismiss the allegations that All Citizens for Mississippi and Jacqueline Vann in her official capacity as treasurer violated 52 U.S.C. §§ 30104(g)(1)(A), 30116(a)(7)(B)(iii), and 30120(a)(3), and 11 C.F.R. §§ 104.4(c) and 110.11(a)(2), provisions of the Federal Election Campaign Act of 1971, as amended. The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision is enclosed.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

Cleta Mitchell, Esquire
Page 2

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Daniel A. Petalas
Acting General Counsel

A handwritten signature in black ink, appearing to read "Mark Shonkwiler", followed by a horizontal line.

BY: Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analyses

15044382725

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: All Citizens for Mississippi
and Jacqueline Vann in her
official capacity as treasurer

MUR: 6840

I. INTRODUCTION

This matter was generated by a complaint, *see* 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C. § 437g(a)(1)) alleging that All Citizens for Mississippi ("All Citizens"), an independent expenditure only political committee ("IEOPC")¹, violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by: (1) failing to include a complete disclaimer on a newspaper advertisement advocating for Senator Thad Cochran's re-election; (2) failing to file a 24-Hour independent expenditure report for the advertisement; and (3) making an illegal in-kind contribution to Cochran by republishing a photograph of Cochran obtained from Cochran's campaign website.²

All Citizens acknowledges that it failed to include a complete disclaimer on the advertisement. It asserts, however, that it was not required to file a 24-Hour independent expenditure report because the advertisement cost less than \$1,000. It also asserts that it made no illegal in-kind contribution to Cochran because the image of Cochran it used was in the public domain, it unilaterally created the text of the advertisement, and it did not coordinate with

¹ *See* All Citizens Statement of Organization (filed June 6, 2014). Jacqueline Vann is the treasurer of All Citizens. *Id.*

² Complainant filed an improperly signed Complaint on June 2, 2014, before All Citizens' registration was processed by the Commission. The Complaint was later re-filed with a proper signature on June 13, 2014. A few days later, Complainant supplemented the Complaint with public information about the Statement of Organization that All Citizens had filed with the Commission. *See* Comp. Supp. (filed June 17, 2014).

Cochran. Respondents argue that the mere use of a photograph that is publicly available on a campaign's website does not support a coordination allegation.

The Commission dismissed the allegation that All Citizens failed to include a proper disclaimer; dismissed the allegation that All Citizens failed to file a 24-Hour independent expenditure report for the advertisement; and dismissed the allegation that All Citizens made an in-kind contribution to Cochran by republishing the Cochran Committee's campaign materials in the advertisement.

II. FACTS

On May 29, 2014, four days before Mississippi's June 3, 2014, Republican primary election, All Citizens disseminated a full-page advertisement in The Mississippi Link newspaper that advocated Senator Thad Cochran's re-election to the United States Senate.³ See Compl. at Exhibit 1. The top third (approximately) of the advertisement has a photograph of Cochran on the right-hand side with the text "VOTE June 3rd," "Thad For Mississippi," and "Serving All Mississippians" on the left. The remainder of the advertisement describes Cochran's legislative record and accomplishments and ends with the following statement:

The decision on who is going to be our next senator is going to be made in the republican primary. We are asking democrats to cross over and vote in the republican primary to ensure our community's interest is heard.

The bottom of the advertisement includes a disclaimer stating only that it was "Paid for by All Citizens for Mississippi."

³ The Mississippi Link is a small weekly African American owned newspaper published in Jackson, MS. All Citizens Resp. at 2, 3 (filed July 16, 2014); see Compl. at 1.

15044382728

According to records submitted by All Citizens, it paid The Mississippi Link \$800 on June 6, 2014, to publish the advertisement.⁴ All Citizens Resp. at 3 (filed July 16, 2014). Specifically, All Citizens provided a copy of the newspaper advertisement rate sheet, the invoice, and its \$800 payment check to run the advertisement. *Id.*, Exs. B-D. All Citizens also states that the advertisement was designed by Kehinde Gaynor, a full-time independent graphic designer, who owns a graphic design company. *Id.* at 2. All Citizens does not, however, specify the amount that it allegedly paid Gaynor to design the advertisement, and no such amount is discernible from All Citizens' disclosed payments. Although All Citizens disclosed a \$225 disbursement on June 16, 2015 to Gaynor for "Brochures," that payment appears related to its get-out-the-vote activities. *See* All Citizens 2014 Amended July Quarterly Report (filed Jan. 12, 2015).

According to All Citizens, it obtained the photograph of Cochran used in the advertisement directly from the Cochran Committee's campaign website. All Citizens Resp. at 2, 5. Indeed, the photograph in the advertisement appears identical to a photograph from the biography section of the Cochran's campaign website. *See* Compl. at Exhibit 4. The campaign website also includes biographical and other information about Cochran, photographs of Cochran, the logo/slogan "Thad For Mississippi," and a quotation that includes the phrase "I will continue focusing on representing all Mississippians." *Id.*

⁴ All Citizens disclosed a total of \$27,575.71 in independent expenditures supporting Cochran during the 2014 Republican primary and runoff elections. *See* All Citizens 2014 Amended July Quarterly Report, Sch. E. (filed Jan. 12, 2015); All Citizens 24/48 Hour Report of Independent Expenditures (July 29, 2014). The \$800 disbursement to The Mississippi Link for print advertisement was All Citizens' only reported disbursement for Mississippi's June 3, 2014 Republican primary election. All Citizens disbursed the remaining \$26,775.71 between June 11 and 21, for the June 24, 2014 runoff election.

III. LEGAL ANALYSIS

A. Disclaimer

Complainant alleges that the disclaimer stating that the advertisement was "Paid for by All Citizens for Mississippi" was not a proper disclaimer. Compl. at 2-3.

The Act requires that any person making a disbursement for communications expressly advocating⁵ the election or defeat of a clearly identified federal candidate that is not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.⁶ 52 U.S.C. § 30120(a)(3) (formerly 2 U.S.C. § 441d(a)(3)); 11 C.F.R. § 110.11(a)(2).

The advertisement requires a disclaimer because it expressly advocates Cochran's re-election by including the slogan "Thad For Mississippi," the phrase "VOTE June 3rd" next to Cochran's photograph, and the phrase "[w]e are asking democrats to cross over and vote in the republican primary," expressly advocates Cochran's re-election. 11 C.F.R. § 100.22(a). The disclaimer was incomplete because it did not state whether the advertisement was authorized by any candidate or candidate's committee and did not provide a street or website address, or

⁵ Expressly advocating means any communication that, *inter alia*, uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice." 11 C.F.R. § 100.22(a).

⁶ The disclaimer must also be of sufficient type size to be clearly readable, be contained in a printed box set apart from the other contents of the communication, and be printed with a reasonable degree of color contrast between the background and the printed statement 52 U.S.C § 30120(c)(1)-(3) (formerly 2 U.S.C. § 441d(c)(1)-(3); 11 C.F.R. § 110.11(c)(1), (3).

telephone number. 52 U.S.C. § 30120(a)(3) (formerly 2 U.S.C. § 441d(a)(3)); 11 C.F.R. § 110.11(a)(2). Nor was the disclaimer set apart from the rest of the content of the advertisement in a printed box. 52 U.S.C. § 30120(c)(1)-(3) (formerly 2 U.S.C. § 441d(c)(1)-(3)); 11 C.F.R. § 110.11(c)(1), (3). All Citizens concedes that the advertisement included express advocacy and that the disclaimer was incomplete, explaining that, as a first-time political committee, it was unaware of the additional disclaimer requirements. *See* All Citizens Resp. at 2-3. It is apparent, therefore, that the All Citizens advertisement did not comply with the disclaimer provisions of the Act.

Notwithstanding the apparent violation of the Act's disclaimer requirements, because the amount spent on the advertisement was modest and the communication included a partial disclaimer naming the entity, the Commission dismissed this allegation.

B. 24-Hour Independent Expenditure Report

Complainant alleges that All Citizens was required to file a 24-Hour Independent Expenditure Report ("24-Hour Report") for the advertisement but failed to do so. *Compl.* at 3. All Citizens asserts that it was not required to file an independent expenditure report because it spent only \$800 on the advertisement, which is below the \$1,000 reporting threshold. *All Citizens Resp.* at 3-4.

A person is required to file a 24-Hour Report with the Commission within 24 hours of making any independent expenditures aggregating \$1,000 or more with respect to a given election between two and twenty days before an election. 52 U.S.C. § 30104(g)(1)(A) (formerly 2 U.S.C. § 434(g)(1)(A)); 11 C.F.R. § 104.4(c). The report must be filed within 24 hours "following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated." 11 C.F.R. § 104.4(c). An "independent

expenditure" is an expenditure by a person expressly advocating the election or defeat of a clearly identified federal candidate that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents. 52 U.S.C. § 30101(17) (formerly 2 U.S.C. § 431(17)); 11 C.F.R. § 100.16.

The available information shows that All Citizens paid The Mississippi Link \$800 to publish the advertisement.⁷ All Citizens allegedly paid an additional unspecified amount to produce the advertisement, but the available record does not establish whether the total costs of the advertisement surpassed the \$1,000 reporting threshold. It appears unlikely, however, that the unspecified production cost for developing a one page newspaper advertisement from publicly available materials on a campaign website would push the total cost of the advertisement over the disclosure threshold. Even if it did, the total cost would likely only have exceeded the threshold by a minimal amount. Thus, the Commission does not think that it is a worthy use of its limited resources to investigate this information, particularly for this minimal independent expenditure by a newly formed political committee that disclosed the expenditure in due course in Schedule E of its first disclosure report. *See* 52 U.S.C. § 30104(c) (formerly 2 U.S.C. § 434(c)) (requiring disclosure of independent expenditures aggregating over \$250); 11 C.F.R. § 104.4(a) (same). Therefore, the Commission dismissed the allegation that All Citizens failed to file a 24-Hour Report for the advertisement. *See Heckler v. Cheney*, 470 U.S. 821 (1985).

⁷ *See* All Citizens Resp. at 3, Ex. B (May 29 invoice for \$800 from The Mississippi Link billing All Citizens "Full Pg Color Thad for Mississippi 5/29"), Ex. C (copy of an \$800 check dated June 6 drawn on All Citizens Bank account and made out to The Mississippi Link for "Ad").

C. Republication of Campaign Materials

Complainant alleges that the advertisement was an in-kind contribution to the Cochran Committee based on the use of Cochran's photograph from the Cochran Committee's website.

The republication of campaign materials constitutes an expenditure or contribution to the campaign that produced the materials. *See* 52 U.S.C. § 30116(a)(7)(B)(iii) (formerly 2 U.S.C. § 441a(a)(7)(B)(iii)) (republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or authorized agents shall be considered an expenditure); 11 C.F.R. § 109.23(a) (republication of campaign materials prepared by a candidate's authorized committee is considered a contribution of the person making the expenditure).

All Citizens admits that Cochran's photograph was taken directly from the Cochran Committee's website, but states that the advertisement was designed independently, without any collusion, participation, or cooperation with the Cochran Committee. *Id.* at 5-6. All Citizens states that the advertisement was designed by Kehinde Gaynor, a full-time independent graphic designer, who owns a graphic design company. *Id.* at 2. All Citizens also states that Gaynor orally represented to All Citizens that he designed and produced the advertisement independently of the Cochran Committee, that he did not contact or consult with the Cochran Committee, and that he independently retrieved Cochran's photograph and other campaign materials directly from the Cochran Committee's website. *Id.* All Citizens further states that it unilaterally composed the text of the advertisement based on its knowledge of the historic contributions of Cochran to and on behalf of Mississippi's African-American community. *Id.* at 5.

The photograph appeared in the top third portion of the advertisement and constitutes about one-sixth of the advertisement's dimensions. Neither Complainant nor All

Citizens addressed the campaign slogans "Thad For Mississippi" and "Serving All Mississippians" that also appeared in the advertisement. Cochran's photograph combined with the slogans takes up the top quarter portion of the advertisement.

In this case, however, it appears that the value of the republished campaign materials is *de minimis*. The cost to run the newspaper advertisement was only \$800, and it does not appear that the unspecified cost to produce the advertisement would significantly increase the total cost of the advertisement.

Considering the minimal cost of the advertisement, approximately \$800, the Commission does not believe that further enforcement action is warranted in this instance. Rather, the Commission dismisses this allegation. *See Heckler v. Cheney*, 470 U.S. 821 (1985).

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS:

Citizens for Cochran
and John M. Robinson in his
official capacity as treasurer

MUR: 6840

I. INTRODUCTION

15
04
44
38
27
34

This matter was generated by a complaint filed with the Federal Election Commission, *see* 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C. § 437g(a)(1)), as amended, alleging that Citizens for Cochran and John M. Robinson in his official capacity as treasurer ("Cochran Committee") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by accepting an in-kind contribution from All Citizens for Mississippi ("All Citizens"), an independent expenditure only political committee ("IEOPC"), by coordinating with All Citizens on a newspaper advertisement that All Citizens ran to support Senator Thad Cochran's re-election in 2014.¹

The Commission dismisses the allegation that the Cochran Committee violated the Act.

II. FACTS

On May 29, 2014, four days before Mississippi's June 3, 2014, Republican primary election, All Citizens disseminated a full-page advertisement in The Mississippi Link newspaper that advocated Senator Thad Cochran's re-election to the United States Senate.² *See* Compl. at

¹ Complainant filed an improperly signed Complaint on June 2, 2014, before All Citizens' registration was processed by the Commission. The Complaint was later re-filed with a proper signature on June 13, 2014. A few days later, Complainant supplemented the Complaint with public information about the Statement of Organization that All Citizens had filed with the Commission. *See* Comp. Supp. (filed June 17, 2014).

² The Mississippi Link is a small weekly African American owned newspaper published in Jackson, MS. All Citizens Resp. at 2, 3 (filed July 16, 2014); *see* Compl. at 1.

Exhibit 1. The top third (approximately) of the advertisement has a photograph of Cochran on the right-hand side with the text "VOTE June 3rd," "Thad For Mississippi," and "Serving All Mississippians" on the left. The remainder of the advertisement describes Cochran's legislative record and accomplishments and ends with the following statement:

The decision on who is going to be our next senator is going to be made in the republican primary. We are asking democrats to cross over and vote in the republican primary to ensure our community's interest is heard.

The bottom of the advertisement includes a disclaimer stating that it was "Paid for by All Citizens for Mississippi."

According to records submitted by All Citizens, it paid The Mississippi Link \$800 on June 6, 2014, to publish the advertisement.³ All Citizens Resp. at 3 (filed July 16, 2014). Specifically, All Citizens provided a copy of the newspaper advertisement rate sheet, the invoice, and its \$800 payment check to run the advertisement. *Id.*, Exs. B-D. All Citizens also states that the advertisement was designed by Kehinde Gaynor, a full-time independent graphic designer, who owns a graphic design company. *Id.* at 2. All Citizens does not, however, specify the amount that it allegedly paid Gaynor to design the advertisement, and no such amount is discernible from All Citizens' disclosed payments. Although All Citizens disclosed a \$225 disbursement on June 16, 2015 to Gaynor for "Brochures," that payment appears related to its

³ All Citizens disclosed a total of \$27,575.71 in independent expenditures supporting Cochran during the 2014 Republican primary and runoff elections. *See* All Citizens 2014 Amended July Quarterly Report, Sch. E. (filed Jan. 12, 2015); All Citizens 24/48 Hour Report of Independent Expenditures (July 29, 2014). The \$800 disbursement to The Mississippi Link for print advertisement was All Citizens' only reported disbursement for Mississippi's June 3, 2014 Republican primary election. All Citizens disbursed the remaining \$26,775.71 between June 11 and 21, for the June 24, 2014 runoff election.

get-out-the-vote activities. *See* All Citizens 2014 Amended July Quarterly Report (filed Jan. 12, 2015).

All Citizens states that the advertisement was designed independently, without any collusion, participation, or cooperation with the Cochran Committee. All Citizens Resp. at 5-6 (filed July 16, 2014). According to All Citizens, it obtained the photograph of Cochran used in the advertisement directly from the Cochran Committee's campaign website. *Id.* at 2, 5. Indeed, the photograph in the advertisement appears identical to a photograph from the biography section of the Cochran's campaign website. *See* Compl. at Exhibit 4. The campaign website also includes biographical and other information about Cochran, photographs of Cochran, the logo/slogan "Thad For Mississippi," and a quotation that includes the phrase "I will continue focusing on representing all Mississippians." *Id.*

The Cochran Committee denies any involvement with the advertisement and asserts that Complainant has provided no information to the contrary. Cochran Committee Resp. at 1 (filed Aug. 6, 2014). The Cochran Committee requests that the Commission find no reason to believe as to it and dismiss the Complaint.

III. LEGAL ANALYSIS

Complainant alleges that the Cochran Committee accepted an in-kind contribution from All Citizens by coordinating with All Citizens on the advertisement, in violation of the Act. Compl. at 4. Complainant provides no additional information other than the presence of Cochran's campaign photograph in the advertisement to support the coordination allegation.

Due to the *de minimis* cost of the advertisement at issue in this case, the Commission concludes that pursuing this matter further would not be an efficient use of the Commission's resources. Accordingly, the Commission exercises its prosecutorial discretion to dismiss the

